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was held that the automobile was forfeited, regardless of the innocence of the owner. The prosecution was had under the Prohibition Act of 1918.¹⁹ As has been shown above, the legislature may make the owner's innocence immaterial. Here the court declared that the test of liability is the guilty knowledge of "the person in charge." If the person in charge has such knowledge, the vehicle is liable, although the owner is ignorant of its unlawful use.

PARTIAL PAYMENT BY ONE JOINT DEBTOR TOLLING STATUTE OF LIMITATIONS AS TO ALL.—Where several persons are jointly liable for a debt, there is grave dispute as to whether a partial payment by one of them, without the knowledge, consent or direction of the others, suspends the running of the statute of limitations as to all of the co-debtors. There is a sharp division of authorities on this question, many States of this country being on each side.

As far back as 1781, an English court had this question before it for adjudication, and after due consideration reached the conclusion that a partial payment by one joint debtor suspends the running of the statute of limitations, not only as to the one paying, but also as to the co-debtors.¹ The decision in this case is brief, but the reasoning of the court is that payment by one is payment for all, the one acting virtually as agent for the others. Also the co-debtors, having the advantage of the partial payment must therefore be bound thereby.

During the early period of our history this English decision was followed in many of the States and now the doctrine therein set forth is law in Arkansas,² Georgia,³ Missouri,⁴ New Jersey,⁵ North Carolina,⁶ Oregon,⁷ Rhode Island,⁸ South Carolina⁹ and probably other States. The arguments on reason and principle in support of this view are not numerous and all seem more or less to have their origin in *Whitcomb v. Whiting*.¹⁰ To suspend the statute in any case there must be an admission of the debt and a

¹⁹ Acts 1918, c. 388, § 57.

¹ *Whitcomb v. Whiting*, 2 Doug. 652.

² *Hicks v. Lusk*, 19 Ark. 692.

³ *Tillinghast v. Nourse*, 14 Ga. 641; *Brewster v. Hardeman*, Dud. Ga. 138.

⁴ *Harris v. Stewart*, 197 Mo. App. 489, 196 S. W. 1033; *Kemble v. Logan*, 79 Mo. App. 253; *Block v. Dorman*, 51 Mo. 31; *Craig v. Callaway County Court*, 12 Mo. 94.

⁵ *Corlies v. Fleming*, 30 N. J. L. 349.

⁶ *Moore v. Beaman*, 111 N. C. 328 16 S. E. 177; *Green v. Greensboro College*, 83 N. C. 449; *Woodhouse v. Simmons*, 73 N. C. 30.

⁷ *Partlow v. Singer*, 2 Ore. 307.

⁸ *Woonsocket Savings Inst. v. Ballou*, 16 R. I. 351, 16 Atl. 144, 1 L. R. A. 555.

⁹ *Smith v. Caldwell*, 15 Rich. Law 365; *Silman v. Silman*, 2 Hill Law 416.

¹⁰ *Supra*.

promise to pay.¹¹ A partial payment is in general the strongest evidence that the person paying is liable. And a partial payment by one is evidence of an admission by all because of implied agency between the parties.¹² Another principle on which a payment by a joint debtor is allowed to affect the other parties is the community of interest between them and the presumption that no acknowledgment will be made by the party paying adverse to his own interest.¹³ Also, a continuing authority in each to act for all may be assumed, it is contended, and since an advantage accrues to all, the statute must be suspended as to all.¹⁴ The payment of one being the payment of all,¹⁵ he who reaps the benefit must also bear the burdens.

A few States hold this doctrine because of the specific wording of their statutes, notable among these being Oregon.¹⁶ But even there the court says in one of its opinions that the weight of authority is otherwise.¹⁷ The doctrine of *stare decisis* seems to form the basis of most of the decisions holding the statute of limitations to be suspended as to all the joint debtors.¹⁸ The States first followed the English precedent and when the question arose again later they followed their own previous decisions, deeming it better to continue along the path they had first chosen than to change, even for the better doctrine.

The weight of reason and authority, however, seems to repudiate the early English case. It is held that the payment by one of several joint debtors does not suspend the running of the statute of limitations as to the others in Alabama,¹⁹ Colorado,²⁰ Illi-

¹¹ *Pritchard v. Howell*, 1 Wis. 131, 60 Am. Dec. 363.

¹² In a joint obligation, payment by one is evidence of an admission by all "because by entering into a joint agreement they have conferred authority on each other as to the joint duty created by the agreement; because there is a community of interest * * *; and because of technical difficulties that would result from holding that an obligation, which subsists jointly, should be in any way affected by an admission, but yet affected, not in its original joint shape, but as a new and several obligation of the obligor, who made the admission." *Bowdre v. Hampton*, 6 Rich. Law (S. C.) 208, 219.

¹³ *Disborough v. Bidleman, Spencer* (N. J.) 275; *Bowdre v. Hampton*, *supra*.

¹⁴ *Brewster v. Hardeman*, *supra*.

¹⁵ *Ellicott v. Nichols*, 7 Gill. (Md.) 85, 48 Am. Dec. 546; *Burgoon v. Bixler*, 55 Md. 384, 39 Am. Rep. 417.

¹⁶ *Partlow v. Singer*, *supra*.

¹⁷ "Were our own statute silent on the subject, we think there is no doubt that the weight of authority is that a payment on a note, by one of two joint makers, does not operate to renew the note as to the other joint obligor." *Partlow v. Singer*, *supra*.

¹⁸ *Tillinghast v. Nourse*, *supra*. The court in *Corlies v. Fleming*, *supra*, said: "If this were an original question, I am not at all sure that the proposition (statute only suspended as to one paying) would not be held good law." *Moore v. Beaman*, *supra*; *Woonsocket Savings Inst. v. Ballou*, *supra*. This court is "constrained to yield to the unbroken current of authorities" in this State. *Silman v. Silman*, *supra*.

¹⁹ *Knight v. Clements*, 45 Ala. 89, 6 Am. Rep. 693.

²⁰ *Coulter v. Bank*, 18 Col. App. 444, 72 Pac. 602.

nois²¹, Kansas,²² Maine,²³ Massachusetts,²⁴ Michigan,²⁵ Montana,²⁶ New Hampshire,²⁷ New York,²⁸ Pennsylvania,²⁹ Vermont³⁰ and Washington.³¹ The reasoning of these courts is much stronger than that of those in conflict with them and appears to be more correct.

They contend that the statute of limitations was originally held simply to raise a presumption of payment, the debt still being alive, and this presumption was rebutted as to all of the obligors by a part payment by one, the statute therefore being suspended as to all. Now, however, the statute of limitations is considered as a *statute of repose*, intended to afford security against stale claims, the original debt being no longer demandable.³² The debt, being considered dead, must be revived; that is, it stands not by its original force but by the new promise.³³ Being dead, it cannot be revived save by the promise of the party to be affected by revival or by his duly authorized agent. A joint debtor is not, because of that relation alone, agent for his co-debtors to acknowledge the debt or to promise for them that it will be paid.³⁴ A partial payment by one is merely an agreement by the one, evidenced *prima facie* by the part payment, and is binding only on the maker of such payment.³⁵ Not being able to bind directly his co-debtors, for lack of the power of agency, he will not be allowed to do it indirectly by payment.³⁶

Such payments, to affect a joint debtor as to the statute of limitations, must be made by him or for him by his agent.³⁷ Some courts hold, however, that if made with the knowledge, consent and ratification of the others, payment by one will be sufficient to toll the statute as to all,³⁸ but the contrary is also law.³⁹

²¹ *Kallenbach v. Dickinson*, 100 Ill. 427.

²² *Steele v. Souder*, 20 Kan. 39.

²³ *McKenney v. Bowie*, 94 Me. 397, 47 Atl. 918.

²⁴ *Balcom v. Richards*, 6 Cush. (Mass.) 360.

²⁵ *Borden v. Fletcher*, 131 Mich. 220, 91 N. W. 145.

²⁶ *Oleson v. Wilson*, 20 Mont. 544, 52 Pac. 372, 63 Am. St. Rep. 639.

²⁷ *Whipple v. Stevens*, 22 N. H. 219.

²⁸ *Shutts v. Fingar*, 100 N. Y. 539, 3 N. E. 588, 53 Am. Rep. 231.

²⁹ *Lazarus v. Fuller*, 89 Pa. St. 331.

³⁰ *Bailey v. Corliss*, 51 Vt. 366.

³¹ *Old Dominion Mining, etc., Co. v. Daggett*, 38 Wash. 675, 80 Pac. 839.

³² *Willoughby v. Irish*, 35 Minn. 63, 27 N. W. 379, 59 Am. Rep. 297.

³³ *Winchell v. Hicks*, 18 N. Y. 558.

³⁴ "Where the relation is merely that of joint debtors, neither is the agent of the other to make a new contract with the creditor, or to bind the others by a new promise changing or affecting their legal rights, or giving such creditor a right of action against them which he would not otherwise have." *Willoughby v. Irish, supra*; *Shoemaker v. Benedict*, 11 N. Y. 176, 62 Am. Dec. 95.

³⁵ *Bottles v. Miller*, 112 Ind. 584, 14 N. E. 728.

³⁶ *Shoemaker v. Benedict, supra*.

³⁷ *Hoover v. Hubbard*, 202 N. Y. 289, 95 N. E. 702.

³⁸ *Adams v. Douglas*, 128 Ill. App. 319.

³⁹ *Hoover v. Hubbard, supra*.

Stare decisis is apparent in the decisions of these courts as well. Many of the cases holding this doctrine are decided merely on precedent without other consideration and without reasoning. In some States there has been direct statutory provision on the subject,⁴⁰ which by necessity was followed by the courts; the provision being either to contradict the opposite doctrine, as held by the courts of the enacting State, or simply to avoid the possibility of the courts holding that a partial payment by one joint debtor should suspend the statute of limitations as to all.

Though the courts on either side have not wasted words in discussing the question, yet the conclusion may be fairly drawn from reasoning and from a heavy numerical majority of the decisions that the modern and better rule is that a partial payment by one joint debtor without the authority of the others will not suspend the running of the statute of limitations except as to the one making such payment.

CONSTITUTIONALITY UNDER THE FOURTEENTH AMENDMENT AND THE PROPOSED NINETEENTH AMENDMENT OF STATE LAWS LIMITING JURY SERVICE TO MALE CITIZENS.—This question is of ever growing importance. As the wave of equal suffrage sweeps over the country, engulfing State after State and culminating finally in the proposal of a Federal constitutional amendment, great interest attaches to the question of the extent to which women will be accorded the same rights and duties as men. The scope of this note will be confined to a discussion of the effect of the grant of suffrage upon the right or duty of jury service. It should be noted that the majority of the supporters of the equal suffrage movement desire and expect by the amendment to vest women with all the rights, privileges and duties that men now enjoy and perform. Bearing in mind the natural tendency of the courts to construe a law in accordance with the expectations of its supporters, it seems probable that a point will be stretched, if necessary, to give the amendment the interpretation they desire. However, it is highly important that a question of such vital import should be considered from an unbiased viewpoint and decided in accordance with sound rules of statutory construction.

That a woman is a citizen cannot be denied. The Constitution is plain on that point.¹ As a citizen, she is entitled to all the rights, privileges and immunities enjoyed by other citizens and guaranteed by the Fourteenth Amendment. But there is a marked difference between rights given and duties imposed. The former are guaranteed by the Constitution and are enjoyed by all citizens alike; the latter are imposed by the legislature and are entrusted only to those deemed qualified for their performance. The determination of the qualifications of those performing State duties

⁴⁰ *Bailey v. Corliss*, *supra*; *State Bank v. Pease*, 153 Wis. 9, 139 N. W. 767.

¹ U. S. Const., Amendment 14, § 1.